



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cinch

DATE: [REDACTED]

SURNAME [REDACTED]

Date: MAY 17 2001

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your Articles of Incorporation state that your general purposes are to operate solely and exclusively as an entity operating as a golf course for recreational and educational purposes. In your latest communication with the Service, you state that your bylaws will be submitted once they are approved by your Board of Directors.

In your application, you state that you will operate a golf course for all people of the surrounding area, with a strong emphasis and priority on providing children and young people, regardless of race or economic background, the chance to learn and play golf. You state that your facility will be available to the public, but will reserve priority access and dedicated tee times for kids with free, or inexpensive, golf instructions for youngsters. You state that a Junior Golf program is already being established to help develop skill levels that not only include golf but also a program which will combine affordable access and training with golf's unique ability to instill and develop essential values, such as honesty, integrity, respect for tradition, etiquette, sportsmanship, self-esteem, self discipline, confidence, and a solid work ethic in young people who are introduced to the game. You state that access will be given at no charge to local schools for school golf programs, and that the access and training programs will commence upon completion of the facility, and will be conducted by qualified golf instructors.

In your application you also state that you intend to lease the golf course, range, short game area, clubhouse/teaching facility, related facilities, and golf equipment. You expect that the average yearly rent will be \$[REDACTED] per year. Although you checked the block in your application indicating that you are not a membership organization, you state that members will pay a yearly membership fee, and that green fees will also be charged. You state that the

[REDACTED]

target groups of youth and minorities will receive discounts or free access if necessary to insure their participation. You also state, in clarification of this statement, that minorities and youth will be targeted by the program and will be granted priority access and other benefits, however the facility will also be open to the public.

The proposed budget you expect annually for your first three years, submitted with your application, indicates that \$[REDACTED] of your income will be from membership, \$[REDACTED] will be from public daily green fees, and \$[REDACTED] will be from special events. Your proposed expenses will be for a superintendent and summer labor, fertilizer, course maintenance, equipment purchases, and miscellaneous, totaling \$[REDACTED]. You also indicated that your projected cost for initial construction will total \$[REDACTED] and that all donations will come from the general public and corporations.

In response to questions asked by the Service in a letter dated [REDACTED] you made the following statements:

- (1) [REDACTED] will have automatic preference on all tee times and will have priority above all other individuals. Generally, these times will be requested and scheduled by the youth instructor or coordinator. Information will be available to each high school and grade school in the area informing them of the junior golf program. Additionally, the local recreation commissions will be informed of the opportunities, and the local media (such as the town newspaper) will be utilized.
- (2) [REDACTED] will be structured programs that will be set up in instructional-type settings which will teach youth the game of golf, including its many aspects. A youth instructor is in place and will administer and coordinate the lessons and programs throughout the season. Local recreation commissions in addition to a youth fund within you will pick up the costs for the children.
- (3) Five school districts in [REDACTED] and neighboring towns will be included as being able to use your facilities for school golf programs.
- (4) The percentage of your tee times dedicated exclusively to youth or youth golf programs will be dependent upon how many children take advantage of the program, and you will do whatever it will take to accommodate them.
- (5) The yearly membership fee will be \$[REDACTED] for families, \$[REDACTED] for singles, and \$[REDACTED] for students. The benefit for members will be playing on the course for a one-time fee as opposed to paying daily green fees.
- (6) Your golf course will be a public golf course. Your green fees will be \$[REDACTED] for weekdays and \$[REDACTED] for weekends, amounts that are normal for your area. These fees will be used for upkeep of the course and additional funding of educational programs.

- [REDACTED]
- (7) Your facility will be located on the north edge of the town of [REDACTED], giving easy access to children in town and easily accessible by roadways by all others. You will lease the land, owned by persons who are members of your organization, on a long-term basis for 99 years at a low rate.
 - (8) You are ready to begin your youth programs and you are not being structured so that any individual or entity will receive economic benefits. You are a very small rural community coming together to provide a better living condition to your future generations through education and a betterment for the entire community.
 - (9) You are not maintaining a golf course for the public good for free; the public may use the golf course if such use does not interfere or conflict in time with your youth programs. The youth programs will be "tantamount" and take precedence.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes so long as no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), CT. D. 1650, C.B. 1945, 375, the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any category of charitable purpose under section 501(c)(3) of the Code.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501 of the Code refer to persons having a personal and private interest in the activities of the organization.

Section 502(a) of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant. It further provides that the term "trade or business" generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 513(c) of the Code provides that an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a

[REDACTED]

larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of any exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private purpose. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged, advancement of education or science, and promotion of social welfare by organizations designed to lessen neighborhood tensions or to eliminate prejudice and discrimination.

Section 1.501(c)(3)-1(d)(3) of the regulations, in defining the term "educational" as used in section 501(c)(3) of the Code, states, in effect, that the term relates to the instruction or training of the individual for the purpose of improving or developing his capabilities.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code, although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. This section further provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

[REDACTED]

Rev. Rul. 59-310, 1959-2 C.B. 146, describes an organization that was formed to establish, maintain, and operate a public swimming pool, playground, and other recreation facilities for the children and other residents of the community. The revenue ruling holds that the organization is exempt under section 501(c)(3) of the Code since the property and its uses are dedicated to members of the general public of the community and are charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government.

Rev. Rul. 65-2, 1965-1 C.B. 227, holds that an organization organized and operated exclusively for the purpose of teaching a particular sport to the children of a community is exempt under section 501(c)(3) of the Code. The organization provides free instruction in schools, playgrounds, and parks and furnishes free equipment to those children who are unable to afford such equipment. The revenue ruling concludes that in carrying out the purposes for which it was formed, the organization is instructing children for the purpose of developing their capabilities, within the meaning of section 1.501(c)(3)-1(d)(3) of the regulations, through a personally taught course of instruction relating to a particular sport.

Rev. Rul. 76-33, 1976-1 C.B. 169, describes an organization providing for the welfare of young people by the conduct of charitable activities and maintenance of services and facilities that will contribute to their physical, social, mental, and spiritual health at a minimum cost to them, or where appropriate at no cost to them, by various desirable means. The organization is recognized as exempt under section 501(c)(3) of the Code. As a portion of its activities, the organization rents dormitory rooms and similar residential accommodations primarily to young people less than 25 years of age. The revenue ruling holds that providing living accommodations with a wholesome and decent environment to young persons contributes importantly to the organization's purpose of providing for the welfare of young people and does not constitute unrelated trade or business within the meaning of section 513.

Rev. Rul. 79-360, 1979-2 C.B. 237, describes an organization exempt under section 501(c)(3) of the Code that, as one of its activities, has organized a health club program which its members may join for an additional annual fee comparable to fees charged by similar local commercial health clubs. The organization's exemption is based on its providing for the welfare of young people by the conduct of charitable activities and maintenance of services and facilities that will contribute to their physical, social, mental, and spiritual health at a minimum cost to them. The revenue ruling concludes that the health club program does not contribute importantly, in the causal sense, to the accomplishment of the organization's exempt purposes, and therefore is unrelated trade or business.

Rev. Rul. 79-361, 1979-2 C.B. 237, describes an organization exempt under section 501(c)(3) of the Code that operates, as one of its activities, a miniature golf course that is open to the general public. The operation of the course is substantially similar to that of commercial miniature golf courses and the admission fees charged are comparable to the fees of similar commercial facilities. The organization's exemption is based on its providing for the welfare of young people by the conduct of charitable activities and maintenance of services and facilities that will contribute to their physical, social, mental, and spiritual health at a minimum cost to them. The revenue ruling concludes that the organization's operation of the course does not

contribute importantly to the accomplishment of its charitable purpose, and therefore is unrelated trade or business.

In The Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), the Tax Court held that an organization operating a religious retreat facility did not qualify for exemption under section 501(c)(3) of the Code because it failed to show that the retreat facility was operated exclusively for religious purposes. Although the organization's mountain lodge offered guests religious, recreational, and social activities, none were regularly scheduled or required. The court concluded that the organization had not met its burden of proof to show that the lodge was operated primarily for an exempt religious purpose and that the recreational and social activities at the lodge were only incidental to a religious purpose.

In The Media Sports League, Inc., TC Memo 1986-568, the Tax Court held that the organization was not described in section 501(c)(3) of the Code because it had a substantial non-exempt purpose of furthering the social and recreational interests of its members. In its conclusion, the court stated that although the furtherance of amateur athletics, a charitable activity, was one of the organization's goals, it had repeatedly held that organizations whose activities are directed substantially toward social and recreational purposes are not eligible for section 501(c)(3) status.

Rev. Ruls. 59-310, 65-2, and 76-33, all supra, stand for the proposition that organizations engaging exclusively in activities designed to promote the welfare of children and young people may be recognized as exempt under section 501(c)(3) of the Code. Where the activity becomes more of the nature of a social and recreational activity for members, however, as discussed in The Media Sports League, Inc., supra, exemption may be in jeopardy. Although you intend to have a strong emphasis and priority on providing children and young people with the chance to learn and play golf, and reserve priority access and dedicated tee times to children with free or inexpensive golf instruction, you still have the overriding primary purpose and activity of operating a public golf course in the same manner as other golf courses in your area. This purpose provides your members with significant social and recreational activities and is a substantial nonexempt activity. As stated in Better Business Bureau, supra, regardless of the number or importance of truly charitable purposes, if you have a non-charitable purpose that is substantial in nature, you are precluded from exemption under section 501(c)(3). See also The Schoger Foundation v. Commissioner, supra.

Although a business activity may not be substantial enough to preclude exemption, as exemplified in Rev. Ruls. 79-360 and 79-361, both supra, nevertheless unrelated trade or business activities are not considered to be exempt activities under section 501(c)(3) of the Code. Operating a public golf course is not considered to be educational within the meaning of section 1.501(c)(3) of the regulations, nor is its operation in furtherance of your exempt purpose. Therefore, it is an unrelated trade or business within the meaning of section 513(a). For this reason section 1.501(c)(3)-1(e)(1) of the regulations is not applicable to your activities and you are organized and operated for the primary purpose of carrying on an unrelated trade or business. The fact that profits will be used for upkeep and educational purposes is not sufficient for exemption as provided in section 502.

[REDACTED]

By providing that members do not have to pay green fees in addition to the yearly membership fee, you are benefiting the private interests of your members in a manner precluded by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. In addition, by constructing a golf course on land leased to you by some of your members with no indication of adequate compensation, your net earnings will be inuring to the benefit of those members as precluded by section 1.501(c)(3)-1(c)(2).

Accordingly, for the above reasons, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
T:EO:RA:T:2 - [REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

/s/
Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2